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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/781,246	02/18/2004	William J. Lueck	7747/302	3141
34205	7590	12/07/2005	EXAMINER	
OPPENHEIMER WOLFF & DONNELLY LLP 45 SOUTH SEVENTH STREET, SUITE 3300 MINNEAPOLIS, MN 55402			PRONE, JASON D	
			ART UNIT	PAPER NUMBER
			3724	

DATE MAILED: 12/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

SP

Office Action Summary	Application No. 10/781,246	Applicant(s) LUECK, WILLIAM J.	
	Examiner Jason Prone	Art Unit 3724	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 18 February 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>2/28/05</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Drawings

1. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "spoon", of claim 5, must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

2. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided. The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

In this case, the abstract uses the legal phraseology "comprising".

Claim Objections

3. Claims 8-14 and 19 are objected to because of the following informalities:

Claims 8, 9, and 14 use the term "digit". This term could be confusing as should be replaced with "finger". Each of claims 10-14 restate previously disclosed limitations of the independent claim. These restated limitations fail to further limit the claim. For example, claim 10 discloses an implement attached to the handle, which has been already disclosed by claim 9. Below is a draft of how claims 10-14 should be setup.

10. The method of claim 9 wherein the step of providing an eating utensil comprising said implement is a fork.

11. The method of claim 9 wherein the step of providing an eating utensil comprising said pad is permanently fixed to a portion of the handle proximal the implement.

12. The method of claim 9 wherein the step of providing an eating utensil comprising said pad is removably attached to a portion of the handle proximal the implement.

13. The method of claim 9 wherein the step of providing an eating utensil comprising said pad having an hourglass shape.

14. The method of claim 9 wherein the step of providing an eating utensil comprising said pad having at least one surface constructed and arranged to accommodate indicia.

The above drafted claims overcome the objection of paragraph 3 only.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-5, 7-12, and 14-19 are rejected under 35 U.S.C. 102(b) as being anticipated by Ritchie (5,975,909).

Claims 1-5, 7, and 8:

In regards to claim 1, Ritchie discloses the same invention including a handle (20), an implement attached to an end of the handle (18 or 31), a pad circumferentially surrounding a portion of the handle (22 in Figs. 1 and 2) and including a lumen through which the handle extends (Fig. 1, handle extends through a cavity within 22).

In regards to claims 2 and 3, Ritchie discloses the pad is capable of being permanently attached to the handle (22, if the pad is never removed than it is permanently attached) and the pad is removably attached (22, all things are removable from each other, whether it be by conventional or unconventional means).

In regards to claims 4 and 5, Ritchie discloses the implement comprises a plurality of tines (18) and the implement comprises a spoon (31).

In regards to claim 7, Ritchie discloses the pad further includes at least one surface constructed and arranged to accommodate indicia (29).

In regards to claim 8, Ritchie discloses pad includes at least one recess formed to accommodate one or more digits of a user (26 and 28), thereby, lessening pressure felt by the one or more digits (Abstract).

Claims 9-12, and 14:

In regards to claim 9, Ritchie discloses the same invention including providing an eating utensil (10) having a handle (20), an implement attached to an end of the handle (18), a pad circumferentially surrounding a portion of the handle proximal the implement (22), orienting the implement such that a side surface of the implement is contacting food (18), and pressing on the pad with a digit in a direction toward the food, thereby creating a cutting force between the side of the implement and the surface of the food (10).

In regards to claim 10, Ritchie discloses a fork having a handle (18).

In regards to claims 11 and 12, Ritchie discloses the pad is permanently fixed to a portion of the handle proximal the implement (22, if the pad is never removed than it is permanently attached) and the pad is removably attached to a portion of the handle proximal the implement (22, all things are removable from each other, whether it be by conventional or unconventional means).

In regards to claim 14, Ritchie discloses having at least one surface constructed and arranged to accommodate indicia (29).

Claims 15-19:

In regards to claim 15, Ritchie discloses the same invention including a handle (20), an implement attached to one end of the handle (18), a means for relieving pressure on a portion of a hand of a user when the user is using an unsharpened surface of the implement to cut food (22).

In regards to claim 16, Ritchie discloses the means for relieving pressure is operably attached to the handle (22 and 20).

In regards to claim 17, Ritchie discloses the pad circumferentially surrounds the handle (22).

In regards to claim 18, Ritchie discloses the means for relieving pressure is constructed and arranged to accommodate indicia (29).

In regards to claim 19, Ritchie discloses the means for relieving pressure includes at least one recess for accepting a digit of the user (26 and 28).

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 6, 13, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ritchie in view of Smuts (3,552,017). Ritchie discloses the invention but fails to disclose the pad comprises plastic and the pad has an hourglass shape. Smuts teaches a pad comprising plastic (Column 2 lines 60-65) and the pad has an hourglass shape (5). Therefore, it would have been obvious to one of ordinary skill in the art, at

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the time of the invention, to have provided Ritchie with a plastic hourglass shaped pad, as taught by Smuts, to allow for a less complex, cost efficient pad.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. McDonald, Russell, Panisch, Taylor, Lai, and Sawyer, Baudino et al., Izushima, Meyers et al., and Falkenstein, Jr.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason Prone whose telephone number is (571) 272-4513. The examiner can normally be reached on 7:30-5:00, Mon - (every other) Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan N. Shoap can be reached on (571) 272-4514. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

December 2, 2005

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A handwritten signature in black ink that reads "Jason Prone". The signature is written in a cursive, flowing style.

Patent Examiner

Jason Prone

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T.C. 3700